



Gadano General Trading Company Limited v Government of the Republic of South Sudan; Stanbic Bank Kenya Limited & another (Garnishee); Bank of South Sudan (Proposed Interested Party) (Commercial Arbitration Cause E070 of 2022) [2025] KEHC 2719 (KLR) (Commercial and Tax) (11 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2719 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL ARBITRATION CAUSE E070 OF 2022**

**A MABEYA, J
MARCH 11, 2025**

BETWEEN

GADANO GENERAL TRADING COMPANY LIMITED APPLICANT

AND

GOVERNMENT OF THE REPUBLIC OF SOUTH SUDAN RESPONDENT

AND

STANBIC BANK KENYA LIMITED GARNISHEE

CITIBANK NA GARNISHEE

AND

BANK OF SOUTH SUDAN PROPOSED INTERESTED PARTY

RULING

1. The Notice of Motion dated 26th November, 2024 by the Interested Party was for leave to appeal against the order of this Court made on 20th November, 2024. It further sought stay of execution of the Garnishee orders made absolute on 20th November, 2024. The Motion was brought under Sections 3 and 3A of the *Civil Procedure Act* and Order 41 and 42 of the Civil Procedure Rules.
2. It was supported by the Affidavit of DENG ARU BOL sworn on 25th November, 2024. The grounds for seeking leave were that the Interested Party was enjoined in these proceedings on 9th February, 2024. That on 20th November, 2024, the Court made the Order Nisi absolute and attached funds held in 2 accounts with Stanbic Bank Kenya Limited.



3. That those bank accounts belong to the interested party and not the respondent. That there is no right of appeal to the Court of Appeal for the order of 20th November, 2024. That the subject accounts are not liable to seizure. That the decree of 7th August, 2023 cannot be enforced against the interested party and that the appeal raises triable issues.
4. The Motion was contested by the decree/holder vide a Replying affidavit sworn by Yahya Mohamed Osman on 16th December, 2024. He contended that once the Court gave the order of 20th November, 2024 it became functus officio. That the application was supported by a defective affidavit having been sworn and Commissioned in South Sudan without a seal of a Notary Public.
5. That under the Bank of South Sudan Act, 2011, the interested party is to hold monies belonging to the Government of South Sudan.
6. I have considered the rival contestations and the record. The decree holder has raised two points of law, viz, that this Court is functus officio and that the Motion is supported by a defective affidavit for want of sealing and should be struck out.
7. On functus officio, that does not arise as the Court has jurisdiction to entertain supplementary proceedings pursuant to the Garnishee proceedings. It is within the jurisdiction of this Court to entertain inter alia applications for stay or for leave to appeal to the Court of Appeal. That objection is without basis and is therefore rejected.
8. On the supporting affidavit, the same was sworn by DENG ARU BOL before the Minister of Justice of the Government of South Sudan on 25th November, 2024 in South Sudan. The execution was authenticated by the Ministry of Foreign Affairs of the South Sudan. With such authentication, I do not think that the execution of DENG ARU BOL required any further witness by a Notary Public. That objection is also dismissed.
9. On merit, leave will be granted where the appeal is shown to be arguable. That there are serious issues to be tried on appeal.
10. In the present case, it is not in dispute that the Interested Party is the Bank that belongs to the Government of South Sudan. The decree holder contended on oath that the statutory instrument that establishes the Bank of South Sudan, that is Bank of South Sudan Act, 2011, provide that it would hold funds belonging to the Government of South Sudan. That averment was not denied. It was also not shown that the funds held in the subject accounts do not belong to the Government of South Sudan.
11. In view of the foregoing, I am of the view and so hold, that the intended appeal is not arguable. The Government of South Sudan entered into a private arrangement with the decree holder and now wants to escape liability therefor. That won't do. It must be called to order and be made to shoulder its obligations thereunder.
12. In the circumstances, I decline to grant the leave sought and dismiss the application with costs.

It is so ordered.

SIGNED AT KISUMU THIS 28TH DAY OF FEBRUARY, 2025.

A. MABEYA, FCI ARB

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MARCH, 2025.

F. GIKONYO



JUDGE

